

**IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.)
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Plaintiff)
v.) Case No. PJM 08 cv 0921
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WORLD AVENUE USA, LLC, et al.)
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Defendants)
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_____)

**PETITIONER WORLD AVENUE USA, LLC'S APPLICATION AS TO AMOUNT OF
ATTORNEYS' FEES**

Pursuant to this Court's Order at DE 468 dated October 27, 2010 that sanctioned Plaintiff BEYOND SYSTEMS, INC. ("BSI") for the third time, Defendant WORLD AVENUE USA, LLC ("WAUSA"), hereby submits its Application As to Amount of Attorneys' Fees awarded by this Court.

The above sanctions arise out of BSI's continued attempt to shield its operations from public scrutiny and specifically, avoid producing documents and depositions to other parties in the *Kraft* Action. On June 23, 2010, WAUSA filed its Motion to Challenge Plaintiff Beyond Systems Designation of Video Inspections and Depositions as Confidential and for Sanctions and Incorporated Memorandum of Law ("Motion to Challenge Confidentiality"). *See* DE 293. The purpose of the Motion to Challenge Confidentiality was to challenge the Confidential designation applied to the videotaped inspection of the so-called "Principal Office" of BSI at 9501 Anchorage Place, Bethesda, Maryland, two other BSI "offices" at 1612 Sherwood Road, Silver Spring, Maryland and 38 Maryland Avenue, Unit 333, Rockville, Maryland, a fourth BSI "office" at 1837 R Street, N.W., Washington, D.C., as well as the depositions of William J. Wagner, Alton K. Burton, and Paul A. Wagner. Shortly after WAUSA sought this relief, a party

in the *Kraft* Action, Connexus, filed on July 6th a Motion to Intervene to Access Sealed Filings and Improperly Designated Materials, to Challenge Confidentiality and for Other Relief, seeking substantially similar relief to WAUSA did in its Motion to Challenge Confidentiality. *See DE 324.*

Recognizing that a public filing would unveil its secret position to Connexus and the general public, on July 19, 2010, BSI filed under seal in its entirety a fourteen (14)-Page Memorandum titled Sealed Response in Opposition re Motion De-designate Video Inspections and Depositions as Confidential. *See DE 345.* To ensure that its position remained shielded from public scrutiny, on July 19, 2010, BSI filed the subject Interim Sealing Motion and Incorporated Memorandum of Law (“Motion to Seal”), seeking to seal its entire Opposition to Defendant WAUSA’s Motion to Challenge BSI’s Designation of Video Inspections and Depositions As Confidential And For Sanctions. *See DE 346.* On August 5, 2010, WAUSA filed its Memorandum in Opposition To BSI’s Interim Motion to Seal Filing At DE 345 And For Sanctions. *See DE 385.* On August 24th, BSI filed a Reply In Support of Its Motion to Seal At DE 346. *See DE 403.*

On October 27, 2010, the Court denied the Motion to Seal that BSI had filed at DE 346. *See DE 468.* The Court held:

Plaintiff’s global request to seal its entire 14 page memorandum in opposition to a filing by Defendant has no foundation in fact or law. Nor is there substantial justification for Plaintiff’s attempted designation. The Court finds the award of sanctions appropriate. Defendant shall have 14 days to seek a reimbursement of its fee and expenses incurred.

The subject Order is but one of five Orders in which BSI and related parties have been sanctioned in this case and its companion case pending in the U.S. District Court for the District of Columbia, *World Avenue USA, LLC v. William J. Wagner*, Miscellaneous No. 09-557

(HHK/AK), (U.S. District Court, District of Columbia) (“District of Columbia Action”). In the companion District of Columbia Action, the Court Order stated:

Given the revelation of responsive documents during the deposition [of William J. Wagner], Respondent’s repeated failure to disclose their existence, and his refusal even now to adequately excuse that failure, this Court finds it appropriate to award Petitioner [World Avenue USA, LLC] costs and attorneys’ fees related to responding to this instant renewed motion for sanctions.

See District of Columbia Action, DE 21, p. 9.

This Court has also entered Orders sanctioning BSI for its opposition to the Motion to Compel As to WAUSA’s Third Set of Interrogatories and in connection with the Motion to Compel Production of Documents Responsive To Fourth Request for Production. *See* DE 444, 441. More recently, this Court has sanctioned BSI a fourth time for the filing of its First Motion to Compel Defendant WAUSA to Provide Complete Production of Documents/Request for Sanctions Pursuant to Rule 37. *See* DE 468.

WAUSA incurred \$2,281.50 in attorneys’ fees in connection with the Motion to Seal [DE 346] and the preparation of a Memorandum in Opposition thereto [DE 385]. The attorneys’ fees and costs are detailed in the Declarations of Sanford M. Saunders, Jr. and John L. McManus. *See* Exhibits 1-2.

WHEREFORE, Defendant WORLD AVENUE USA, LLC respectfully requests entry of judgment against Plaintiff BEYOND SYSTEMS, INC. in the amount of \$2,281.50, plus statutory interest, with a reservation of jurisdiction to receive a further Application of attorneys’ fees and costs incurred in the event that Plaintiff BEYOND SYSTEMS, INC.’s files a Motion for Reconsideration of the Court’s October 27, 2010 Order at DE 468, and for such other and further relief as this Court deems just and appropriate.

Dated: November 10, 2010

Respectfully submitted,
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